

MICHIGAN EMPLOYER ADVISOR

Fall 2010

FUTA tax credit reduction remains in effect for 2011

Michigan employers will see an increase in their annual federal unemployment tax (FUTA) bills again next year.

The increase will mean that for tax year 2010 Michigan employers will be paying an additional \$42 per employee in federal unemployment taxes when they come due in January 2011.

The tax increase is used to repay the federal loans Michigan has taken out to continue state unemployment benefit payments. The state's unemployment insurance trust fund — like those in 31 states — is currently insolvent, and the state owes the federal government approximately \$3.8 billion for loans over the past few years.

The FUTA tax rate is normally 6.2 percent; however, there is an allowed credit of 5.4 percent, which gives employers a net FUTA tax rate of 0.8 percent on the first \$7,000 of each employee's wages for a total of \$56.

Federal law, however, requires a reduction in the FUTA tax credit in states that have outstanding federal loans for two years. Michigan has had outstanding loan balances since 2008.

Consequently, the FUTA credit for Michigan employers was reduced by 0.3 percent for tax year 2009 and will be reduced by another 0.3 percent for 2010. Thus, for tax year 2010, the FUTA tax rate will rise to 1.4 percent ($0.8\% + 0.3\% + 0.3\% = 1.4\%$).

As a result, for the federal UI taxes due by January 31, 2011, Michigan employers will have to pay an extra \$42 per employee. An additional \$21 will be added to the federal unemployment tax in each succeeding year for which the loans are not repaid.

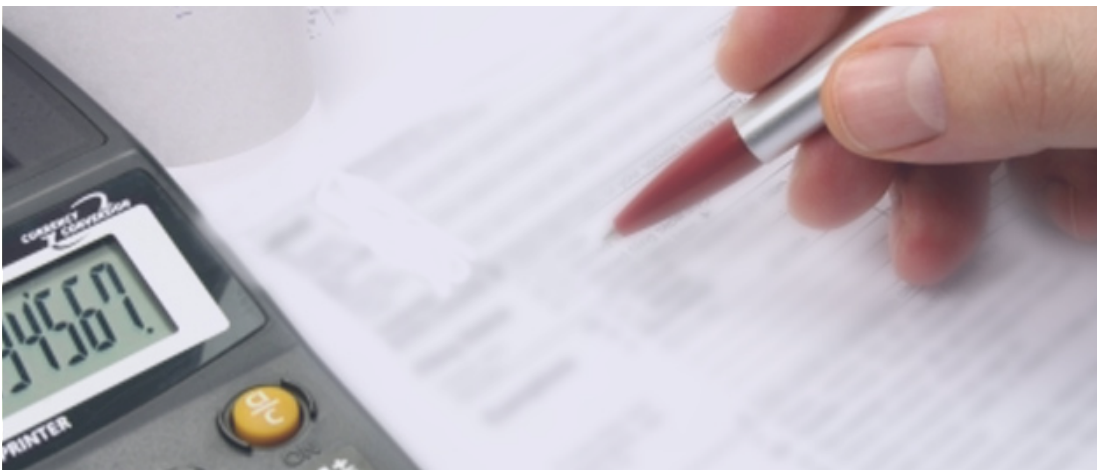
The FUTA credit reduction and resulting tax increase applies to all contributing Michigan employers, except for Indian Tribes, nonprofit organizations and governmental entities.

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IN THIS ISSUE

Access EWAM & State Tax Credit **2**

Solvency Tax **3**

UIA Employer Seminars **4**

Ask The Lawyer **5**

Take Control of your UI Account

Did you know that the Unemployment Insurance Agency (UIA) has an easy way to manage your unemployment account on-line for free? Well, it does, and it's called the Employer Web Account Manager (EWAM). Since its initial launch in May 2006, EWAM has served as a convenient tool for more than 36,000 employers to access an array of services. These employers have found that by a simple click of the mouse they can file quarterly tax reports, make tax payments, submit protests, and as of May of 2010, apply for the Michigan Tax Credit. All this at no charge to employers, and with 24 hour access.

In November of 2009, UIA sent a letter Michigan employers encouraging them to join the thousands of other employers who were already saving time and money by being part of the EWAM community. These employers were issued and mailed a password - the first step to using EWAM. Since UIA initiated this step, more than 13,000 employers have made the decision to utilize EWAM.

Managing your account on-line is secure, it's more accurate, processing is quicker, and it allows for more real-time interaction with UIA staff. Fifteen webcasts about EWAM were created and made available through UI Tube at www.michigan.gov/uia as a way for employers to take a closer look at EWAM. Thousands have viewed these webcasts.

Access to EWAM has also been made available through the Michigan Business One Stop web portal (www.michigan.gov/business) to provide additional convenient accessibility.

If you are ready to take the step to join EWAM, it's simple to obtain an account. From www.michigan.gov/uia, select "UIA Online Services for Employers" link, and then select the "Operate a Business" link. This will take you to the sign-in page for EWAM. From here, simply select the "register as a new user" option and you are on your way to an easier way to conduct business with UIA!

Many Michigan employers in line for 2011 state tax credit on their unemployment taxes

Thousands of Michigan employers potentially qualify for a tax credit on their state unemployment taxes in 2011 because of the additional federal unemployment taxes they will be paying (see previous article).

"State law allows employers that have paid Michigan unemployment taxes for at least five years and have a positive balance in their unemployment experience account to receive a credit on their state unemployment taxes because of an increase in the federal unemployment tax (FUTA)," Stephen Geskey, director of the Unemployment Insurance Agency, said.

Michigan law provides for a credit of either 50 percent of the additional FUTA tax paid by the employer for the prior year, or the employer's taxable wages for the previous calendar year multiplied by the Nonchargeable Benefits Component (NBC) of the employer's state unemployment tax rate for that year; whichever is the lesser amount.

The NBC is one of three components in an employer's unemployment tax rate and is generally 1.0 percent but could be less. The NBC pays for the costs of unemployment benefits that are pooled among employers, such as benefits not charged directly against a specific employer's account, and benefits charged against employers that have gone out of business.

If the credit is up to 50 percent of the extra FUTA tax, then it could be as much as \$21 per employee, which is half of the \$42 per employee that Michigan employers will be paying in additional FUTA in January 2011 for tax year 2010.

The credit is intended to ease the burden on employers who have to pay the extra FUTA, because of the state's need to borrow from the federal government to pay state unemployment benefits.

Geskey explained that employers will have to apply for the tax credit, and UIA will begin to apply the credit to employer state unemployment accounts in tax year 2011. The Michigan tax credit will continue as long as employers are required to repay the federal loan advances through higher federal unemployment taxes.

To receive the credit, Geskey said, an employer must meet the following criteria:

- Is a contributing employer
- Has paid Michigan unemployment taxes for five years or more
- Has a tax rate for the year of the Michigan tax credit
- Has a positive reserve ending balance in its unemployment tax account as of June 30 of the previous calendar year.
- Has filed all required quarterly tax reports for the year prior to the year of the credit. (In other words, if the Michigan tax credit is for 2011, all required 2010 quarters must be filed.)

2011 State tax credit (cont.)

- Has paid the additional FUTA taxes on IRS Form 940, for the year prior to the year of the Michigan tax credit. The additional FUTA taxes must have been paid to the IRS by December 31 of the year prior to the year of the credit. (i.e., the 2010 FUTA credit reduction is due by January 31, 2011. To qualify for the Michigan tax credit, the additional FUTA taxes must be paid to the IRS no later than December 31, 2011.)
- Has paid its FUTA taxes prior to submitting the Michigan tax credit application
- Has certified the amount of additional 2010 FUTA taxes paid when it applies for the credit

Employers will be able to apply for the Michigan UI tax credit, starting in February 2011. The best way to submit an application is through the agency's Employer Web Account Manager (EWAM) system. Nearly 40,000 employers are now using EWAM and you can too with the help of our EWAM webinars at www.michigan.gov/uia.

State UI solvency tax may trigger on in January 2011

Some Michigan employers will have to pay a state solvency tax beginning in January 2011 (to be due quarterly) absent quick federal action.

The solvency tax is used to pay interest charges on the outstanding federal loans that Michigan had to borrow in order to continue state unemployment benefit payments.

The American Recovery and Reinvestment Act (ARRA) temporarily waived the accrual and payment of interest for 31 states, including Michigan – all of which had borrowed federal funds to continue paying unemployment benefits. The ARRA waived interest through December 31, 2010, and Michigan's legislature suspended the solvency tax in March 2009.

With the interest waiver about to end, Michigan's solvency tax will trigger on in January 2011 unless the ARRA interest free provision is promptly extended. Because 31 states will likely be affected, both the National Governors' Association and the National Association of State Workforce Agencies have urged Congress to extend the interest free provisions through 2012.

Who may be affected?

The solvency tax will impact those employers with negative reserve balances in their unemployment tax accounts. About 35 percent of all Michigan employers have negative reserve balances.

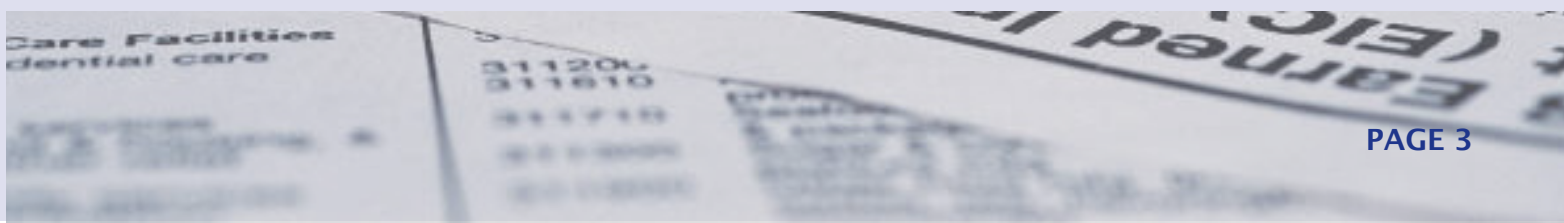
The solvency tax rate is 0.75 percent payable on the first \$9,000 of each employee's wages and amounts to \$67.50 per employee. The solvency tax will be in addition to the employer's calculated state unemployment tax.

How to avoid the solvency tax

There is a way for negative balance employers to avoid paying the solvency tax. They can make a voluntary payment, until November 30, 2010, to bring their experience account balances up to zero or greater.

Voluntary payments are not refundable, but they are credited directly into the employer's experience account.

There are also two other potential advantages to employers who make their unemployment insurance tax accounts positive through voluntary payments. The payment may help reduce the employers' calculated state unemployment tax rate for 2011. In addition, employers with a positive reserve account will become eligible for a Michigan tax credit of up to 50 percent of the extra federal unemployment tax paid on their 2011 federal IRS Form 940, which will become due January 31, 2012.



UIA Employer Seminars 2010: A Retrospective

For the last few years, the Unemployment Insurance Agency (UIA) has held employer seminars' throughout Michigan as a free, comprehensive look at unemployment insurance (UI) law and its impact on the employer community.

The seminars are conducted by the agency's Employer Customer Relations (ECR) Unit, which devotes much of its work and time to educating Michigan businesses and other state and governmental agencies about the state's UI law and how to avoid common mistakes and/or misconceptions about unemployment law.

The employer seminars have become a staple in Michigan's employer community with over 2,000 attendees in over 20 major cities throughout the state and attendance has been growing.

One attendee stated, "The seminar was exceptional in my opinion and one of the most useful ones I have attended."

In 2010, seminars were at capacity in Clinton Township, Detroit, Flint, Grand Rapids, Hastings, Jackson, Kalamazoo and Livonia. Each year there's a waiting list and some locales have had to schedule more than one seminar due to popular demand.

With this in mind, the UIA recently added a page to its website that includes all the information presented at the seminars. [Click here](#) to visit the UIA Employer Seminar section. Employers are able to access all the handouts and presentations that were available at the seminars.

Neil Zechman, chief of UIA's Administrative Law & Rules Section and a presenter at the 2009 and 2010 employer seminars, says, "Employers seem to appreciate the fact that we're there, and that we're really trying to make things clearer for them. They now understand things that were always a mystery to them in the past."

At every session, one can see attendees come to a sudden realization; a moment of truth; or a sigh of relief. The information is broken down and the presenters take great care and pride in keeping everyone engaged. No one leaves with a question unanswered or a problem unsolved.

Here are some of the features one can expect when attending a UIA employer seminar:


- A full-day seminar
- Qualified staff to answers questions
- Step-by-step instruction on understanding benefit claims and unemployment taxes
- Detailed explanations of UIA forms
- Information about UIA's online services

"...As a first time attendee, you provided a lot of info on all aspects of the process from ER side but also some of EE side. You had experts (great attitudes of genuine desire to educate and with professionalism) in each of the areas that adequately answered questions. You provided great handouts that can also be used as a reference resource in addition to your online resources. You provided all the critical components to ensure your attendees were well informed and could remain so via your website resources and customer services group. GREAT JOB. I've paid lots of money for seminars not half as effective. THANK YOU."

With over 80 cities in the state, the UIA has its work cut out in reaching employers and businesses in each community. The sessions have been genuinely welcomed and praised by the attendees, "I was extremely impressed with the seminar. It was very well organized and presented in a logical and clear manner. I understand some things more than I did prior to the seminar."

In addition to the services offered at the seminars, ECR has followed up with each attendee and surveyed them for feedback which will assist in planning future seminars. The unit also followed up asking if any questions or concerns were not addressed at the seminars and ensured employers that other resources are still available after the sessions, such as UI Tube, the Speakers' Bureau and the Employer Web Account Manager.

Future seminar schedules will be announced in the Michigan Employer Advisor and will be posted on the UIA website at www.michigan.gov/uia. The Employer Customer Relations Unit also welcomes additional comments and suggestions regarding future seminars. Employers can email their ideas and comments to EmployerLiaison@michigan.gov.



“Ask the Lawyer”

The Employer Advisor has received a number of questions regarding the payment of unemployment benefits to a worker who continues to work their part-time job but is “underemployed” because they lose their full-time job. Here are three questions related to that situation:

Questions:

- Our small office (4 employees) has decreased hours when the owner goes on vacation. Instead of 8 hours a day, employees work 4 hours a day. One employee states she will file for unemployment for the extra hours she is missing. Is this possible? It is an option for employees to use vacation time or take as unpaid, due to no production when owner is gone?
- Could you explain how an individual who is employed by us, part time, can also be drawing benefits from our UIA account?
- Why is it so hard to fight under employment? We have an employee who has been

working 38 hours a week and claiming unemployment, we have been fighting this for a while, what do we need to do to ensure that he has to pay that back? He says that it doesn't matter because it's the state's money and our company does get charged, I explained to him that this is untrue and we do pay into it. How do I make sure he has to pay that back?

Answer: If a worker files a claim for unemployment benefits, then the Michigan unemployment insurance law provides that all of the wages the worker was paid in roughly the previous 18 months are taken into consideration in determining the worker's entitlement to benefits, in determining how much the worker can receive in benefits, and which employers will be charged for those benefits. Although a worker might be working part-time while drawing benefits the worker would have established the claim by using not only the part-time work from the employer he or she is continuing to work for, but also part-time or full-time work with another employer or other employers. For that reason, the worker's benefit rate might be high enough that his or her continued part-time work does not reduce the unemployment benefits to zero.

The part-time wages are used to reduce the worker's weekly unemployment benefits. The weekly unemployment benefit would be reduced by half of the gross wages the individual continues to receive, and the combination of the gross wages and the unemployment benefits cannot exceed 1½ times the worker's weekly unemployment benefit rate.

With regard to the use of vacation pay, regardless of when any accrued vacation payment was actually made, an employer usually has the option to allocate vacation pay to a period of the employer's choosing. Vacation pay can then be used to reduce the unemployment benefits otherwise payable for the week to which the vacation pay is allocated. The reduction is calculated in the same way as described above for wages.

Before allocating accrued vacation pay, an administrative rule of the State (Rule 302 governing the UIA) provides that the employer must notify the worker before the last day of work prior to the vacation period that vacation pay is being allocated to the vacation period, and that the allocation may render the worker ineligible for unemployment benefits for that period. The notice can be given to the worker in writing, or posted in a conspicuous place in the office. A copy must also be provided the collective bargaining representative, if any.

When a worker is drawing unemployment benefits from an employer he or she is working for part-time, the employer may be able to escape being charged for those benefits. If the part-time employer who is being charged for a share of the weekly benefits is a “contributing” employer (one that pays a quarterly tax payment based on an annually computed unemployment tax rate); there were

If you have a question for “Ask the Lawyer,” please submit it to: employeradvisor@michigan.gov. Please indicate if you would like to remain anonymous.

Answer:(cont)

at least two employers in the worker's recent employment history; and the employer is paying the person gross wages of at least the employer's share of the worker's weekly unemployment benefits, the employer can request relief from the benefit charges for that worker.

Form UIA 1136, "Statement of Unemployment Benefits Charged or Credited to Employer's Account," shows the employer's weekly share of charges for the worker's unemployment benefits. The employer can mail or fax a copy of that Form to the UIA, asserting that gross wages paid by the employer to that worker for the week shown at least equals the benefit charge for that week for that worker. The Agency would then cancel the benefit charges to the employer for that week.

Part D of the UIA Employer Handbook offers an explanation of how unemployment benefits are reduced by earnings; Part B includes an explanation of the possible use of "vacation pay" to reduce unemployment benefits. There is also an "Advocacy Fact Sheet" in Part F of the Employer Handbook that discusses the use of "Special Payments" such as vacation pay in reducing unemployment benefits, and there is another Fact Sheet on "Remuneration and 'Underemployed.'"

There is also a Webcast entitled "Unemployment Benefits for 'Underemployed Workers'" that is available on the UIA website, www.michigan.gov/uia. At the homepage, click on "Webcasts" on the left side of the page, and on the Webcasts page scroll down to "Employer Webcasts" and click on it to get to a listing of employer webcasts. Click on "Unemployment Benefits for 'Underemployed Workers'" to view the 6½ minute webcast on this subject and to obtain the related Fact Sheets.

"Ask the Lawyer" (cont.)



Question:

If my company hires an individual based on an employment contract with a clear date of expiration. Can he/she cash unemployment benefits past the date of expiration of the contract?

Answer:

Assuming the worker was an employee, then when the job comes to an end, the worker becomes unemployed for lack of work. The fact that the work came to an end at a mutually agreed date specified at the time the work was accepted does

not alter the fact that the worker is indeed unemployed for lack of work, and therefore does not prevent the worker from being eligible and qualified for unemployment benefits.

In some cases, the individual may have been hired as an independent contractor to do a limited job in a prescribed time period, with no direction or control as to how the work was to be accomplished. In such an instance (when the worker is an independent contractor rather than an employee), no unemployment benefits would be payable to the worker. There is a Webcast on the UIA's website that may help in distinguishing which workers are employees and which are independent contractors. You may access that Webcast by accessing the UIA website at www.michigan.gov/uia. At the homepage, click on "Webcasts" on the left side of the page, and on the Webcasts page scroll down to "Employer Webcasts" and click on it to get to a listing of employer webcasts. Click on "Employee Misclassification" to view the 5 minute webcast on this subject and to obtain the related Fact Sheet and a PowerPoint presentation on the subject.

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Please direct questions, suggestions and comments to: employeradvisor@michigan.gov